

**INFORMATIONAL REPORT
OF THE INTERIM STUDY COMMITTEE ON
PROFESSIONAL LICENSING AND
CONSUMER ISSUES**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2004

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2004

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INTERIM STUDY COMMITTEE ON PROFESSIONAL LICENSING AND CONSUMER ISSUES

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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

[NOTE: The rules of procedure established for study committees by the Legislative Council provide that final reports must be approved by a majority of the voting members of the committee. Because a majority of the members of the Interim Study Committee on Professional Licensing and Consumer Issues was not present at the conclusion of the Committee's proceedings, this report was not approved and is provided for informational purposes only.]

I. LEGISLATIVE COUNCIL DIRECTIVE

The Legislative Council directed the Committee to study the following topics:

1. Minimum mandatory training standards for firefighters (SCR 24)
2. Certification of emergency management organizations and professional emergency managers (SR 24)
3. Predatory gasoline pricing (SR 13)
4. Mortgage lending policies (HB 1229)

II. INTRODUCTION AND REASONS FOR STUDY

1. The basis of the Committee charge concerning the need for study to examine increasing the minimum mandatory training standards for firefighters in the state of Indiana is Senate Concurrent Resolution 24, authored by Senator R. Meeks.

2. The basis of the Committee charge concerning the need for study of the issues relating to the certification of emergency management organizations and professional emergency managers is Senate Resolution 24, authored by Senator Wyss.

3. The basis of the Committee charge concerning the need for study of the issues related to predatory gasoline pricing throughout the state of Indiana is SR 13, authored by Senator Waterman.

4. The basis of the Committee charge concerning the need for study of issues related to mortgage lending policies was HB 1229, authored by Representative Bardon, Representative Crawford, Representative Pond, and Representative Burton, and sponsored by Senator Bray, Senator Lanane, Senator Clark, and Senator Broden.

5. In addition, the issue of expansion of the requirements that must be met by a wholesale drug distributor for eligibility for licensure in Indiana was presented by Representative Budak.

III. SUMMARY OF WORK PROGRAM

The Committee met three times during the 2004 interim. Meetings were held as follows:

1. August 16, 2004, at the City Council Chambers, Washington, Indiana; presentations and discussion concerning the issue of predatory gasoline pricing.

2. September 14, 2004 at the Emergency Services Education Center of Wayne Township (Marion County), Indianapolis, Indiana; presentations and discussion regarding the certification of emergency management organizations and professional emergency managers; presentations and discussions concerning establishing minimum mandatory training standards for firefighters; further discussion regarding predatory gasoline pricing; and a discussion regarding expanding the requirements for wholesale drug distributors.

3. October 13, 2004, at the State House in Indianapolis, Indiana; presentation and discussion regarding wholesale drug distributors; further discussion on topics of study.

IV. SUMMARY OF TESTIMONY

The Committee heard testimony from employees of the Attorney General's office, the Indiana State Board of Pharmacy, State Emergency Management Agency, the Counter Terrorism Council, the State Fire Marshal, representatives of various professional associations, private citizens, and other interested parties. A summary of the testimony during the three meetings is presented below.

Predatory Gasoline Pricing

The Committee heard testimony concerning the issue of predatory gasoline pricing. Sherry Deane, of the American Automobile Association, spoke regarding gasoline pricing statistics. Maggie McShane, representing the Indiana Petroleum Council, provided testimony regarding conditions affecting the world oil market and American production and consumption.

Scott Imus, Executive Director of the Indiana Petroleum Market and Convenience Store Association (IPCA), presented his association's position that legislation prohibiting below cost sales of gasoline would help both retailers and consumers. Darlene Stanley, owner of a convenience store in north central Indiana, related her damaging experience when a large marketer entered into her local gasoline market and sold motor fuel for almost a month at what she believed to be under cost. She also contributed to a discussion regarding rack (wholesaler to the retailer) and retail price and how a dealer decides on the daily price for the motor fuel. Curtis Bodine, a motor fuel dealer from Terre Haute, Indiana, testified regarding legal remedies available against cut-price competitors. He also believed that the basis of American commerce is the small business owner and the spirit of fair competition.

Mike Ackerman, a motor fuel dealer from Jasper, Indiana, and the President of IPCA, offered his support for legislation regulating motor fuel pricing, which he and his association felt would place the smaller retailer in a more competitive position. Charles Ganus, with Murphy USA Marketing Company, a larger retailer of automotive fuel, stated that profit margins on

motor fuel level out over time, and that price spikes and dips even out the price of motor fuel. He noted that gasoline has always been sold with some type of promotion, and that a minimum markup price becomes another tax-like add-on to the price of fuel.

Grant Monahan, President of the Indiana Retail Council (representing larger retailers), stated that competition should be preserved and that competitive retailers do their best to provide customer satisfaction and value.

Jennifer Thuma, Legislative Liaison for the Attorney General's office, said that the Attorney General's office has no current legal authority to investigate below cost gasoline pricing. Lance Gallihan, of Gallihan Oil Company in Peru, Indiana, stated that he had the same experience as Ms. Stanley; a larger retailer came into town, underpriced the fuel, and negatively affected his business. Chuck Taylor, Jr., of C.E. Taylor Oil, Washington, Indiana, spoke concerning the credit card usage fees his business incurs and further in depth about rack prices.

George Raymond, Indiana Chamber of Commerce, said that although it is sympathetic to small business, the Chamber is fundamentally opposed to the government setting prices and that the Chamber would oppose a bill setting a minimum fuel price. Tom Dersch, of Dersch Energies in Evansville, Indiana, believed that predatory pricing destroys competition, therefore sacrificing consumer protection. He also believed that the main offices of larger corporations that offer the lower prices are located out of the state.

Chairperson Crooks reported on statistics regarding the "pump and run" (P.L. 117-2001) convictions that result in driver's license suspension, furnished by Marilyn Cage of the Bureau of Motor Vehicles.

In discussion, Committee members observed that: (1) they had heard testimony that below cost gasoline pricing has occurred; (2) such sales may have been harmful to other retailers in the same general location; and (3) they had heard that competition exists in the gasoline market.

Certification of Emergency Management Organizations and Professional Emergency Managers

Phil Roberts, Deputy Director of the State Emergency Management Agency (SEMA), informed the Committee of the changes in the role of emergency management over the years. While recently Indiana has had its share of natural disasters, since 9/11 the detection and prevention of man-made potential disaster is of equal importance. Brad Thatcher, Director of Preparedness Planning for SEMA, felt that training for emergency managers and staff is very important and that counties with full-time managers receive more federal funds. Earl Morgan, CounterTerrorism Security Council, supported legislation setting emergency management standards. He expressed his opinion that the recently announced plan to use the former Muscatatuck Center as a preparedness training center was perfect in that the site can mimic a real

life setting.

Steve Wettschurack, Director of Emergency Management in Tippecanoe County, believed it is important not only to plan for antiterrorism (including bioterrorism and agriterrorism), but also for natural disasters. He said the emergency manager position should be full-time employment as there is so much paperwork required for the job. C.R. Brown, a full-time emergency management director from Madison County, spoke concerning the paperwork requirements and gave the Committee his analysis of the 9/11 Commission report. He believed that backup training must be given for the assumption of others' duties. Brad Gavin, General Counsel for SEMA, explained PD 3462 concerning emergency management issues and amendment 2005PD3462.001 to the Committee. He stated that if that bill were to become law, SEMA does not yet know what education and training requirements would be required for certification as an emergency manager.

Minimum Mandatory Training Standards for Firefighters

Thomas Hanify, President of the Professional Firefighters Union of Indiana, said that a career paid firefighter should be required to achieve certification of the NFPA Firefighter II designation; all Indianapolis fire departments currently require this level of achievement. He believed that the Public Safety Training Institute should require more stringent standards of firefighters. In response to a query, Mr. Hanify agreed that nothing prohibits a municipality from requiring more stringent training standards of its firefighters.

Jim Parker, President of the Indiana Volunteer Firefighters Association, felt that any requirement for increased training of volunteers must be held at a time convenient to the volunteers, and that any increase in legislatively required training will impact the Association's members. He further believed that the cost of teaching supplies, student manuals, and instructor equipment cannot be borne by the department or the individuals involved. He reminded the Committee that volunteer firefighters save taxpayer money by not necessitating a paid department.

State Fire Marshal Ivan Nevil gave an update of the history of the training requirements for firefighters, including information regarding the Public Safety Training Institute.

The Committee considered the idea of emergency management certification as contained in PD 3462 and 2005PD3462.001.

Mortgage Lending Policies

The Committee did not hear testimony or study the issue of mortgage lending policies.

Wholesale Drug Distributor Licensing

Pursuant to a request by Representative Budak, the Committee considered the recently issued Model Rules for Wholesale Distributors from the National Association of Boards of Pharmacy. Joshua Bolin, Board Director of the Indiana State Board of Pharmacy, stated that the idea behind the Model Rules was to assure the quality of drugs provided from wholesalers. He informed the Committee that these Model Rules do not deal with Internet sales of pharmaceuticals, and that he was not personally aware of adulterated drugs being sold over the Internet to Indiana consumers. Mr. Bolin stated that Indiana's Board of Pharmacy regulates drug wholesalers in conformity with the Food and Drug Administration guidelines.

Jennifer Thuma, Legislative Liaison for the Attorney General's office, stated that although federal law prohibits drug importation from other countries, other states have chosen to ignore the federal law.

The Committee heard from Matthew Murawski, Associate Professor, Purdue University, regarding what he considers to be the growing problem of drug counterfeiting, most commonly done during the drug wholesale distribution process. He stated that drug pedigrees might be an almost infallible way to ensure drug quality. Mr. Bolin related that he now was aware of an instance of drug adulteration in an Indianapolis hospital that fortunately was caught before administration to patients. Lou Belch, representing the Indiana Pharmacists Alliance, stated that requiring drug pedigrees would not place a burden on dispensing pharmacists. Grant Monahan, of the Indiana Retail Council, stated that the drug pedigree issue was one that had not been fully considered by its membership.

The Committee considered the following concepts: (1) making the penalty for counterfeiting or misrepresentation of pharmaceutical drugs, at either the wholesale or the retail level, a felony; (2) encouraging further study of drug pedigrees, so that the best manner of tracking the distribution chain of pharmaceutical drugs can be determined; (3) strengthening certification for pharmaceutical wholesalers; and (4) granting rulemaking authority to the Indiana Pharmacy Board to promulgate regulations regarding wholesale pharmaceutical distributors.

V. CONCLUSION

The Committee was unable to approve this report or adopt findings and recommendations because a majority of its voting members was no longer in attendance at the conclusion of the third meeting.

WITNESS LIST

Sherry Deane, American Automobile Association
Maggie McShane, Indiana Petroleum Council
Scott Imus, Indiana Petroleum Marketers and Convenience Store Association
Darlene Stanley, citizen and retailer, Huntington, Indiana
Curtis Bodine, citizen and retailer, Terre Haute, Indiana
Mike Ackerman, Indiana Petroleum Marketers and Convenience Store Association
Charles Ganus, Murphy USA Marketing Company
Grant Monahan, Indiana Retail Council
Jennifer Thuma, Legislative Liaison, Attorney General's Office
Lance Gallihan, citizen and retailer, Peru, Indiana
Chuck Taylor, Jr., citizen and retailer, Washington, Indiana
George Raymond, Indiana Chamber of Commerce
Tom Dersch, citizen and retailer, Evansville, Indiana
Marilyn Cage, Legislative Liaison, Bureau of Motor Vehicles
Phil Roberts, Deputy Director for State Emergency Management Agency (SEMA)
Brad Thatcher, Director of Preparedness Planning for SEMA
Earl Morgan, Counter Terrorism Security Council
Paul Goss, Director of the Daviess County Emergency Management Agency
Steve Wettschurack, Director of the Tippecanoe County Emergency Management Agency
C.R. Brown, Director of the Madison County Emergency Management Agency
Thomas Hanify, President of the Professional Firefighters Union of Indiana
Jim Parker, President of the Indiana Volunteer Firefighters Association
Ivan Nevil, Indiana State Fire Marshal
Thomas Miller, International Association of Firefighters
Joshua Bolin, Legislative Liaison and Board Director of the Indiana State Board of Pharmacy
Matthew Murawski, Associate Professor, Purdue University
Lou Belch, Indiana Pharmacists Alliance
Charlie Hiltunen, Pfizer, Inc.